

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Robert K. & Heidi Linn Folkestad,
Petitioners-Appellants,

v.

Warren County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 12-91-0001
Parcel No. 01-000-09-0222

On April 8, 2013, the above captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The hearing was conducted under Iowa Code sections 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellants Robert K. and Heidi Linn Folkestad are represented by attorney Stephen Hall of Hall and Schlenker, Indianola, Iowa. They represented themselves at hearing. County Attorney Jon Criswell is counsel for the Board of Review. County Assessor Brian Arnold represented it at hearing. Both parties submitted evidence and testimony in support of their positions. The Appeal Board having reviewed the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

The Folkestads, owners of a property located at 2252 N Scotch Ridge Road, Carlisle, Iowa, appeal from the Warren County Board of Review decision regarding their 2012 property assessment. The original 2012 assessment was \$354,700, representing \$72,500 in land value and \$282,200 in dwelling value. The property classification was changed from agricultural to residential for the 2012 assessment.

The Folkestads protested to the Board of Review claiming (1) their assessment was not equitable as compared with assessments of other like property under Iowa Code section

441.37(1)(a)(2); (2) the subject property was assessed for more than the value authorized by law under section 441.37(1)(a)(2); (3) the subject property was not assessable, was exempt from taxes or was misclassified under section 441.37(1)(a)(3); (4) there was an error in the assessment under section 441.37(1)(a)(4), essentially stating the property was misclassified; and (5) there was a change downward in the value since the last assessment under sections 441.37(1)(b) and 441.35(3). The Board of Review granted the protest, in part, reducing the total assessed value to \$349,900, allocated as \$72,500 in land value and \$277,400 in improvement value. It denied a change in classification.

The Folkestads then appealed to this Board reasserting the single claim that the subject property is misclassified. They assert the correct assessed value is \$253,100, allocated as \$8000 in land value; \$241,200 in improvement value; and \$3900 in agricultural building value.

The Folkestads' classification was first changed from agricultural to residential in 2011. They appealed the 2011 assessment and classification change to this Board. In February 2012, this Board ordered the 2011 classification be changed back to agricultural after a contested case hearing. The Board of Review failed to perfect an appeal of that decision. Less than two months after this Board's Order, the Assessor again changed the classification of Folkestads' property to residential for the 2012 assessment year.

The subject site is 7.9 acres, and a pond takes up approximately two of those acres. Situated on the remaining acreage are two dwellings. One is a one-and-a-half-story, frame single-family residence built in 1910 with 1821 square feet of living area; a full, unfinished basement; an open porch and a concrete patio. It was referred to as the "old farm house." The second dwelling is a 1288 square-foot, one-story frame, built in 2004 with a full, walkout basement and 500 square-feet of finish. It has a wood deck, an open porch and a concrete patio. It also has a 672 square-foot, attached garage. Additionally, there is a detached garage built in 1948 and a 3456 square-foot, steel utility building built in 1990, with 312 square feet of attached lean-to.

The Folkestads have owned the subject property since 1990. They originally lived in the old farmhouse and operated a Christmas tree farm. They built a new residence on the subject site in 2004 and currently rent out the older dwelling.

Robert Folkestad referred to the 2011 appeal hearing on the subject property and provided additional testimony regarding the property's current and continued use as a vineyard. Originally, the subject property operated as a Christmas tree farm, and it was classified residential at that time. In 2009, the property was re-classified to agricultural realty by former Warren County Assessor Dave Ellis because the property was transitioning to a vineyard. We previously found the 2011 record showed Folkestad first planted grape vines using old Christmas trees as supports. He trimmed the branches from the trees, bored holes through them, and threaded wire between them to support the grapes. This endeavor eventually failed as the trees rotted, fell down, and were removed within two years (around 2011). According to Folkestad, his vineyard suffered an additional setback in the fall of 2010, when a chemical drift and over-spray from a nearby field destroyed many of the grape vines. Ultimately, Folkestad renewed his efforts in cultivating the vineyard and purchased additional plants and materials in the Spring of 2011. Since 2011, Folkestad testified that additional trellises were constructed and approximately 150 more grape vines were planted. He also testified he even has interested buyers for the grapes once they are mature, as both Jasper Winery and Summerset Winery have approached him about buying portions of the crop. For these reasons, Folkestad asserts the classification of the property should be agricultural as found by this Board in 2011.

On cross-examination, the Board of Review attempted to discredit Folkestad by introducing a transcript of the 2011 appeal hearing and questioning him regarding his prior testimony. Ultimately, the transcript of this Board's previous hearing has little relevance as we found, and the Board of Review failed to challenge, the property was operating as a vineyard and should be classified agricultural. The issue before us is not whether the previous determination was in error, it is whether

the present and primary use of the property has changed since this Board's Order affecting the 2011 assessment.

First, the Board of Review questioned Folkestad regarding the number of grape vines he has planted. Folkestad again asserted he has planted 2500 grape vines; however, he clearly articulated that not every vine planted has lived. Exhibit D is an aerial photo with four identified plots of vineyard area. Folkestad noted he planted two areas with the same grape varietal; and he planted two other areas each with a different varietal. He also referenced some edelweiss vines trellised off his deck; however, the vines on his deck are entirely for private use to make his own wine and are not part of the vineyard.

Second, Brian Arnold questioned Folkestad regarding his investment in the vineyard endeavor. Folkestad responded that the *value* of his investment was about \$5000, but that is not what he paid for the materials.

Regarding the use of the utility building, Folkestad testified that he it holds a number of personal vehicles, but he does have some equipment he uses to maintain the vineyard in the building as well.

Heidi Folkestad also testified the property is being cultivated for grapes. She did not know the count of grapes on the site. However, she asserts there are grape vines and they try to be economical in obtaining plants. She testified they are setting themselves up to have supplemental income for retirement. In addition, she stated that when she retires her intent is to go to Des Moines Area Community college and learn more about the vineyard business. Her testimony was limited in scope and value.

County Assessor Brian Arnold testified that he, an appraiser from his office, and the chairman of the Board of Review physically inspected the subject site in the spring of 2012. Based on that inspection, he asserts the use of the utility building on the site is predominately for personal

recreational vehicles rather than vineyard equipment. Additionally, he stated they physically counted every grapevine in the four areas noted on Exhibit D. He claims this count resulted in a little more than 200 vines. Arnold determined a vine existed wherever there was a “blue tube.” He based this opinion on Folkestad’s 2011 testimony that the plants, when planted, were in “tubes.” (Exhibit B, p. 23, lines 7 through 17). Arnold’s testimony of how many grape vines he contends actually exists on site appears consistent with best practices for grapes based on an Iowa State University article (Exhibit E) written by Michael L. White, a viticulture expert. The article indicates the typical vine spacing is between six to eight feet for row widths of twelve feet. Arnold further contends that if the four plots Folkestad has designated as vineyard area were fully planted in the future, this would result in between approximately 450 to 600 vines per acre.

Arnold testified he “literally saw no grapes” on the site during the inspection in May 2012. The lack of visible grapes in the early planting season is understandable, as they grow and ripen through summer. Furthermore, reviewing the transcript from the earlier hearing (Exhibit B), it is clear that a grape vine may take three to five years to be productive. Regardless, the issue before us is not whether the grapevines have matured to the point of bearing fruit, it is whether the use of the property has changed between 2011, when we previously determined it was an agricultural vineyard, and the 2012 assessment date.

Arnold further asserts that even if the subject vineyard were fully producing, it cannot show a significant profit with grape production because of limited land area available for growing grapes. Arnold’s position is that the subject site cannot show a profit with grape production greater than it currently does with the income of the rental property. Additionally, Arnold notes there are two residences, each requiring their own septic areas and lateral fields, and a large outbuilding, which he contends is not being use in good faith for agricultural purposes. Therefore, he believes these facts support his position the correct classification of the subject property is residential.

In this appeal, Folkestad argues the primary use of his property continues to be as an operating vineyard, as previously determined in 2011. The Board of Review, and Arnold, seek for this Board to re-examine our 2011 decision asserting that decision is wrong, and contend the property still is not primarily used for a vineyard. Despite the Board of Review's desires, the 2011 assessment determination is not before this Board, the issue in this case is whether the property's use has changed since our earlier determination.

Conclusions of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). However, if property is classified agricultural property it is to be assessed and valued based on its productivity and net earning capacity. § 441.21(1)(e).

This case revolves around an ongoing dispute between the Folkestads and the Assessor and Board of Review regarding the subject property's correct classification. In 2011 based on applicable statutory and administrative law, this Board determined the property was properly classified agricultural as it was being primarily used as a vineyard. The Board of Review failed to challenge this Board's contested case order and adjudication in court. In 2012, the Assessor again reclassified the property without any apparent change in the property's use.

While the Board of Review appears to ask us to revisit our earlier ruling, the 2011 assessment is not before us. Furthermore, the only issue before this Board regarding the classification of the subject property is now whether the Board of Review has shown a change in the use of the property between 2011 and 2012 to justify a change in the previously determined agricultural classification for the 2012 assessment. The Iowa Supreme Court has ruled "[a] classification in one year is competent and persuasive evidence of the proper classification in a subsequent year." *Cott v. Bd. of Review of City of Ames*, 442 N.W.2d 78, 81 (Iowa 1989). Further, "[w]hen it is admitted that the use of the real property is the same as it was in the prior years when the court adjudicated its classification, there is a strong presumption that no change has occurred. The court should not be obligated to reexamine the same facts again and again. A condition once shown may be presumed to continue until the contrary is shown." *Id.* In this case, this Board determined the proper classification of the property for the 2011 assessment year was agricultural. Less than two months after that ruling, the Assessor changed the classification back to residential. Because the issue was previously adjudicated and the property was found to be agricultural, in this case, the Board of Review must overcome the presumption of continuity of use to justify the change in the classification. *Id.*; *Colvin v. Story County Bd. of Review*, 653 N.W.2d 345 (Iowa 2002). "[T]he presumption is an evidentiary one." *Colvin*, 653 N.W.2d at 349.

Based on the record as a whole, the Board of Review fails to convince this Board the use of the property has changed. The primary use of the property itself remains dedicated as a vineyard for

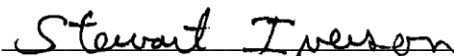
growing grapes. Photographic evidence shows the property still contains trellising for grape production. Robert Folkestad testified he planted another 150 grapevines in 2012 and continues to invest time and money into grape production. The Folkestads' testimony shows they have committed themselves to this endeavor, are replanting and planting new grapes annually, and even have interested buyers for the grapes once they are mature.

THE APPEAL BOARD ORDERS the January 1, 2012, assessment of the Folkestads' property located at 2252 N Scotch Ridge Road, Carlisle, Iowa, is classified agricultural realty. The assessed value of the two dwellings and other improvements shall remain at a total of \$277,400. The agricultural land value shall be \$8400, the same value established in the 2011 assessment appeal. The total assessment shall be \$285,800. The Warren County Auditor shall correct all tax records, assessment books, and other recordings pertaining to the assessment referenced herein.

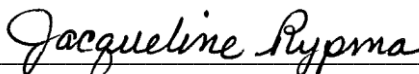
Dated this 4th day of June 2013.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair



Jacqueline Rypma, Board Member


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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>June 4, 2013</u> .	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
	
Signature _____	